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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Joint written statement*/ submitted by Europe-Third World Centre, a non-governmental organization in general consultative status, and the American Association of Jurists, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[19 March 2001]

*/ This written statement is issued, unedited, as received in English and French from the submitting non-governmental organization(s).

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ENG

The responsibility of transnational companies (TNCs) in the violation of human rights

During the last twenty years, TNCs have acquired unprecedented economic, financial and political power. Markets and capital globalization, which has been mostly profitable to these companies, has allowed for further concentration of their capital and production means, creating oligopolistical situations. Their activities cover all sectors . They can choose where and how to produce and to stock up, and where and how to sell their products.

Furthermore, TNCs have the power to influence the policies of economically weak States (all the more so since their turnover is superior to the GDPs of such countries), as well as the policies of more powerful States, as shown by the composition of the newly-elected US president' cabinet. TNCs can also influence the policies and the decision-making process of international institutions.[1]

This accumulation of power hasn't gone hand in hand with a similar level of awareness and responsibility, especially in the field of human rights. It hasn't either brought any international legal structure nor democratic instruments strong enough to monitor the activities of these companies. The actual situation is disheartening : abusive exploitation of natural resources and human labour, water, soil and air pollution, environmental disasters, support to armed conflicts, to bloody repressions, and to coups ; corruption and financial crime.[2]

In response to information provided by human rights organisations, TNCs have fought back with seduction campaigns in order to convince the public opinion (mostly western consumers) that they have become aware of their responsibility and that their business is becoming ethically correct. These communication strategies have mainly aimed at creating a better image of themselves but brought very few - and temporary – improvements, and no questioning about the way they operate.

Faced with the terrible environmental and human situation characterizing our time, and considering the concentration of power in the hands of TNCs, it is only legitimate and logical to question oneself about the impact of these companies' activities and the way they operate on humankind and its future.

To coax public opinions, TNCs present themselves as the elite corps of the democratic, flourishing « civilisation » fighting against totalitarianism and poverty. But the reality is different : TNCs are driven by their search for profits and power and have no interest in changing the status quo.

Civil and political rights

Numerous studies have shown evidence of TNCs' support to coups d'Etat and/or to dictatorships. Practically, their support came as investments aiming at ensuring « political stability » for States of major interest because of their raw materials, their labour force and their ability to repress social protest movements that bring forward environmental, cultural and union-related claims.[3]

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[1] Regarding the Global Compact :
see http://www.xs4all.nl/~ceo/observer1/un.html. Concerning Europe : Observatoire de l'Europe industrielle, *Europe Inc.*, Agone Editeur, 2000.

[2] *Sociétés transnationales et droits humains. Etudes de cas et responsabilités*, CETIM, AAJ, FICAT, 2000.

[3] Many other examples are mentioned in Declaration E/CN.4/2001/NGO/105.

It has also been shown that chaos generated by armed conflicts (in Angola, Congo, Colombia, etc) has favoured TNCs' profits in the field of raw-materials development (oil, timber, ore, water, etc). Up to which extent are then TNCs involved in financing rival factions and perpetuating certain conflicts ?

Labour rights and employment

TNCs create fewer direct job opportunities, in proportion to their economic activities.[4] The reduction of payroll costs, through mergers, acquisitions and restructuring, is one of the major neo-liberal strategies aiming at increasing production and capital concentration. *« During these last ten years, the 500 largest companies have made redundant an average of 400'000 employees per year, and this regardless of the considerable progression of their profits. »* [5] *« During the second semester of the year 2000 Internet companies (...) have suppressed 37'177 jobs in the United States. »*[6]

Although the number of jobs tends to decrease globally, it is increasing in developing countries and in free zones. Taking advantage of trade liberalisation and I.T., the big industries *« use local sub-contractors from Asia or Northern Africa ; they no longer need to resort to foreign direct investments to benefit from the advantages of relocation. »*[7]
These advantages are the following :

- very favourable tax conditions ;
- very cheap labour ;
- lax supervision of respect for human rights ;
- a repressive machinery willing to ensure the « security » of their activities.

Opting for countries that offer the best conditions, relocations are also carried out towards countries of the South. For example, Nike has sub-contracted its production in Asia, but following an increase in the wages in South Korea and Taïwan, in the late'80s, sub-contractors from these countries have relocated their production in countries with lower labour costs. Between 1977 and 1995, Nike's turnover was multiplied by 164.[8]

Relocation has multiple negative effects on employment, as well as on the respect for labour rights both in the North and in the South :

- it contributes to labour exploitation in economically-weak countries ;
- it takes advantage of the complexity of subcontractors networks to hide TNCs' involvement in human rights violations ;
- it is a threat for employees from industrial countries, worsening working conditions and increasing precariousness of living conditions.

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[4] The first 200 world companies employ directly 18,8 millions of workers, that is 0,75% of the world labour, while their total sales volume represents more than a forth of the global economic activity, *Courrier international*, No 318, 5th-11th December 1996, p. 31.

[5] F. Clairmont and J. Cavanagh, « Un quart de la production mondiale, deux cents sociétés, sous les ailes du capitalisme planétaire » in *Le Monde Diplomatique*, March 1994.

[6] *Le Courrier*, 9th February 2001.

[7] F. Chesnais, *La mondialisation du capital*, Ed. Syros, 1994, p.90.

[8] D. Horman, *Stratégies des multinationales*, GRESEA, Bruxelles, 1998, F3/5.

Economic, social and cultural rights and the expansion of « developing countries »
The logic behind globalization as imposed by TNCs is one of concentration and exclusion. It favours the industrial and financial elite and only takes into account the credit-worthy population of the world. In this context, developing countries have no chance to improve their economic, social and environmental situation.

Foreign direct investment is mainly used for mergers and/or acquisitions. Privatisation and acquisitions at low prices of public companies generate worse quality of services, higher costs for consumers, also suppressing a source of income for the States concerned in favour of TNCs. Moreover, corruption is used in order to obtain authorizations to exploit raw materials, or to settle their production, thus having a negative impact on respect of human rights and on the economic, social, democratic and environmental future of the populations concerned.

In the pharmaceutical and agroalimentary industry, TNCs' activities are often conflicting with the right to health and to sufficient and adequate diet. Slowing down the diffusion of generic medicine, imposing GAOs or invading local markets (thanks to the WTO agreements in the agricultural field) brings profits to TNCs to the detriment of populations, especially in the South.

The creation of *Terminator*, a genetically modified seed made sterile, but whose yield and nutritional value has not improved, shows that TNCs are ready to undermine farmers and endanger the food-related safety of entire populations in order to control the growth stages of agricultural products and to impose them.

In the environmental field, the disaster is patently obvious. Adding to major disasters such as Bhopal or Exxon Valdés, natural resources are over-harnessed and the soil, the air and the water are constantly polluted by oil, chemical and agricultural industries. *« The economic logic, according to which we should get rid of toxic waste in low-wages countries, is impeccable to me(...) Any strategy related to environmental problems that slows down the growth of poor countries (...) is perfectly immoral. »*[9] This statement was made in 1991 by Mr. Larry Summers, director of Economic studies at the World Bank, subsequently Treasury deputy-secretary under the Clinton administration. It says a lot about a certain concept of immorality and the importance given to the right to live in a healthy environment.

Citizens preoccupation and voluntary codes of conduct
Thanks to the work of human rights organisations and the rise of social movements, the violations committed by TNCs are well documented and publicly denounced. The result has been a worse image in the eyes of consumers. In order to reconquer their markets and pursue their growth, TNCs have responded with large seduction campaigns aimed at enhancing their image and convincing western consumers of their good intentions both in the social and environmental field.

Voluntary codes of conduct and labels are at the center of this campaign since there is a link between the mediatization of violations committed by TNCs and the adoption or creation of voluntary codes of conduct. This is how, following massive exposure campaigns in the Western countries, companies such as Levi's, Nike or Adidas have adopted voluntary codes of conduct. While the content of and the respect for these codes are voluntary, their existence has been imposed by social pressure. Just as Mr. Hughes de Rouret, Shell CEO at the time of writer Ken Saro-Wiwa' execution , declared : « *We have understood that the international*

[9] E. Toussaint, *La bourse ou la vie*, CETIM/CADTM/ED. LUC PIRE/SYLLEPSE, Bruxelles, 2000, p. 357.

society is no longer ruled only by traditional authorities and that it is time to take into account consumers, moral pressure and environmentalists, which has lead us to reconsider our principles. »[10]

For TNCs, these communication campaigns have two purposes :
- to retrieve their prestige in the eyes of consumers, as well as their competitivity on the market ;
- to avoid real democratic control that would compel them to respect all human rights.

For human rights organisations, voluntary codes of conduct are highly questionable :
- most of these codes do not include minimal standards and social rights that are internationally accepted. Trade-union freedom and the right to collective organisation are regularly missing ;
- these codes do not have any legal value ;
- they are generally adopted without consulting the employees and are rarely translated into local languages ;
- their application, often temporary, hasn't shown any important improvement ;
- they create a classification of rights by putting forward improvements that move public opinions (child labour) to the detriment of other fundamental rights (trade union rights) ;
- they allow TNCs to elude the real problems that their way of conducting business causes to the respect for all human rights ;
- independence of the organisations in charge of surveillance is not guaranteed.

Voluntary codes of conduct are often presented as a first step towards more binding measures. But one might rather wonder whether their real purpose is not to avoid adoption of such measures. Whatever the reason, the current situation shows that there is still a discrepancy between rights and duties.

Conclusion

TNCs' practices have negative effects on all human activities because they are based on the exclusion principle and on power and wealth concentration. TNCs are a major factor in the impoverishment and precariousness of populations all over the world, and in the deterioration of the environment. Their practices and policies conflict with democratic principles, the expansion of less developed countries and the well-being of our planet and its populations.

This is why it is urgent to create an international, binding legal structure that will allow real democratic regulation and control of TNCs activities.As a creation of the internationl community, the UN is in the best position to help creating such a structure. We hope that the Working Group on TNCs of the Sub-Commission on the Promotion and Protection of Human Rights will pass on similar suggestions during the 58th session of the Commission on Human Rights.

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[10] D. Horman, *Stratégies des multinationales*, GRESEA, Bruxelles, 1998, F4-4.